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Before Me '95
Federal Communications Commission
Washington, D.C. 20554

DISPATCHED BY
MM Docket No. 92-299

In the Matter of

Amendment of Section 73.606(b), RM-8049
Table of Allotments,
TV Broadcast Stations.
(Appleton, New London and Suring,
Wisconsin)

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: July 7, 1995;

Released: July 17, 1995

By the Chief, Allocations Branch:

1. At the request of Wisconsin Voice of Christian Youth, Inc. ("Wisconsin Voice"), licensee of television Station WSCO, Channel 14-, Suring, Wisconsin, the Commission has before it the *Notice of Proposed Rule Making* in this proceeding, 8 FCC Rcd 181 (1993), proposing reallocation of Channel 14- from Suring to either Appleton or New London, Wisconsin, and modification of the Station WSCO license to specify a new community of license.¹ Wisconsin Voice filed comments and reply comments. Aries Telecommunications Corporation ("Aries") filed comments and reply comments. Finally, Wisconsin Voice filed a response and Aries filed a reply to the response.² For the reasons discussed below, we deny the proposed reallocation to either Appleton or New London.

BACKGROUND

2. On July 12, 1989, Wisconsin Voice filed a Petition for Rule Making proposing reallocation of Channel 14- from Suring to Appleton, Wisconsin, and modification of its license to specify Appleton as the community of license. On July 28, 1989, this Petition for Rule Making was returned as unacceptable for consideration. The reasons for that action were that the proposed reallocation would not result in a preferential arrangement of allotments as required by *Modification of FM and TV Authorizations to Specify a New Community of License*, ("Community of License"), 4 FCC Rcd 4870 (1989); *recon.*, 5 FCC Rcd 7094 (1990), and that the proposal would contravene the Commission Order freezing new applications and allotments

within the minimum co-channel distance of 30 major markets. See Order, *In the Matter of Advanced Television Service ("Freeze Order")*, 52 Fed. Reg. 28346, published July 29, 1987. Wisconsin Voice filed a Petition for Reconsideration and Reinstatement directed to that action. Aries filed an Opposition to the Petition for Reconsideration and Wisconsin Voice filed a Reply to that Opposition. In its Reply, Wisconsin Voice stated that in the event that its proposed reallocation to Appleton should ultimately be found unacceptable, it would be "fully prepared" to accept a reallocation to New London. Thereafter, we adopted the *Notice* proposing reallocation of Channel 14- to either Appleton or New London, Wisconsin, and requested that Wisconsin Voice to specify which reallocation proposal it wishes to pursue. In response, Wisconsin Voice specified New London.

3. In support of its proposed reallocation to New London, Wisconsin Voice first reiterates its earlier argument that Suring, with a population of 626 persons according to the 1990 U.S. Census, "has proven itself incapable of supporting a full service television station," has been unable "to generate sufficient income to meet operating expenses," and is currently off the air. According to Wisconsin Voice, reallocation to New London, with a population of 6,658 persons, is the "most appropriate means to ensure the long-term economic viability" of the facility. In this regard, the proposed reallocation would result in service to 13,640 square kilometers with a population of 670,167 persons, compared to the existing service area of 8,026 square kilometers with a population of 101,155 persons. In comparing the existing allotment in Suring to the proposed allotment in New London, Wisconsin Voice notes that its proposal would result in a first local service to a larger community and therefore would result in a preferential arrangement of allotment as required by *Community of License*. Finally, Wisconsin Voice contends that the *Freeze Order* does not apply to its proposal, and, in any event, waiver would be appropriate in this instance.

DISCUSSION

4. We deny the proposed reallocation. At the outset, we note that this proposal contravenes the *Freeze Order*. The *Freeze Order* states, in pertinent part, as follows:

Accordingly, we will temporarily freeze the TV Table of Allotments in certain areas. No petitions to amend the table will be accepted for those areas. Further, construction permit applications for vacant television allotment in those areas will not be accepted. This freeze, however, will not apply to changes requested by existing stations.

In making this determination, we realize that the existing Suring allotment is already within the Milwaukee, Wisconsin freeze area and that the proposed reallocation to New London is closer to the Milwaukee reference point.³ A

¹ A television station with a "plus" or "minus" offset is required to operate with its carrier frequency 10 kHz above or below the normal frequency. A different offset between two television stations reduces interference and makes possible the separation criteria set forth in our Rules.

² Both of these submissions were accompanied by motions to accept late-filed pleadings. In view of the fact that the untimely

pleadings have not delayed resolution of this proceeding and consideration of these pleadings will enable us to resolve this proceeding on the basis of a more complete record, we will consider both pleadings.

³ The affected freeze areas are the areas circumscribed by the minimum co-channel separation distances specified in Section 73.610(b) of the Rules, from the reference points given in Sec-

reallotment from Suring to New London would be a change in the TV Table of Allotments and is, therefore, within the specific language of the *Freeze Order*. The exclusion with respect to existing stations pertains to construction permit applications such as transmitter relocations, power increases or increases in antenna height. The purpose of the *Freeze Order* was to preserve sufficient broadcast spectrum to insure reasonable options relating to a conversion to a digital television service. As such, the *Freeze Order* does not permit Wisconsin Voice to reallot Channel 14-, located 248.6 kilometers (154 miles) from the Milwaukee reference point, to New London, located 220 kilometers (137 miles) from the Milwaukee reference point.⁴

5. We do not believe that waiver of the *Freeze Order* is warranted. The fact that the Suring Channel 14- allotment is already within the Milwaukee freeze area has the potential to restrict a conversion to digital television system. This fact provides no basis, whatsoever, to justify reallotment of the channel, with the potential to operate Channel 14- at maximum facilities, 28.6 kilometers (16.5 miles) closer to Milwaukee. *Cf. Nacogdoches, Texas*, 4 FCC Rcd 7815 (1989). In this connection, Wisconsin Voice has provided no basis to support its conclusion that this reallotment would have "only a limited impact on spectrum availability for advanced television." At this juncture, we continue to believe that the public interest requires us to preserve spectrum and options in the Milwaukee freeze area.

6. The economic argument advanced by Wisconsin Voice does not warrant reallotment of Channel 14- to New London or waiver of the *Freeze Order*. There was no provision in *Community of License* to have allegations of economic hardship, even if supported, considered in determining whether a proposed reallotment would result in a preferential arrangement of allotments in furtherance of Section 307(b) of the Communications Act.⁵ See *LaGrange and Rollingwood, Texas*, 10 FCC Rcd 3337 (1995). In a similar vein, there is no basis to consider such issues in the context of either the *Freeze Order* or the implementation of a digital television service. This is consistent with the Commission determination that such issues are not relevant in either the licensing or allotment context. See *Policies Regarding Detrimental Effects of Proposed New Broadcast Stations on Existing Stations*, 3 FCC Rcd 638 (1988).⁶

7. Accordingly, IT IS ORDERED, That the Petition for Rule Making filed by Wisconsin Voice of Christian Youth, Inc. to reallot Channel 14- from Suring to New London, Wisconsin, IS DENIED.

8. IT IS FURTHER ORDERED, That the Petition for Reconsideration and Reinstatement filed by Wisconsin Voice of Christian Youth, Inc., IS DISMISSED.

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

10. For further information concerning this proceeding, contact Robert Hayne, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

tion 76.53 for the cities listed in the Appendix to the *Freeze Order*.

⁴ In this case, the freeze area extends 248.6 kilometers (154.5 miles) from the Milwaukee reference point.

⁵ Section 307(b) of the Act requires the Commission to make a "fair, efficient, and equitable distribution of radio facilities."

⁶ In regard to issues that are relevant in a allotment context,

our engineering review has determined that a reallotment of Channel 14- to New London and relocation of the Station WSCO transmitter site would result in a service loss to an area of 3,354 square kilometers with a population of 23,737 persons. This would create a gray area (one television service) of 312 square kilometers with a population of 1,265 persons.